SUPPLEMENT TO

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BANGALORE, THURSDAY, JANUARY 30, 1908.

Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber, Public Offices, at 3 P.M. on Wednesday, the 29th January 1908.

PRESENT.

V. P. MADHAVA RAO, ESQ., C.I.E., Dewan (Presiding).

Ex-officio Members.

T. ANANDA RAO, ESQ., B.A., (First Councillor).
K. P. PUTTANNA CHETTY, ESQ., (Second Councillor).

Additional Members.

Official.

RAJAKARYA PRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.
H. J. BHABHA, ESQ., M.A.
M. KANTHARAJ URS, ESQ., B.A.
S. NARAYANA RAO, ESQ.

Non-official.

RAJAMANTRA PRAVINA C. SREENIVASIENGAR, ESQ.
V. N. NARASIMMIYENGAR, ESQ.
M. C. RANGIENGAR, ESQ., B.A.
B. NAGAPPA, ESQ., (Bar-at-law).
SYED AMIR HASSAN, ESQ.

ABSENT.

Official.

RAO BAHADUR M. MUTHANNA, ESQ.

K. MYLAR RAO, ESQ., B.A., B.L. (Secretary).

[*President; Mr. S. Narayana Rao; Mr. Kantharaj Urs; Mr. M. C. Rangiengar.*]

PRESIDENT.—The Secretary will read to the Council an abstract of the representations received in connection with the Village Offices Bill.

The Secretary reported to the Council the representations received from Mr. S. Setlur, Mr. Hema Hanumanthaiya, Mr. A. Subramanya Sastri and others and the patels and shanbhogs of Tarikere and other places, regarding the Village Offices Bill.

Bill further to amend the Code of Civil Procedure.

PRESIDENT.—The next subject on the agenda paper is that leave be granted to introduce a bill further to amend the Civil Procedure Code. Mover, MR. S. NARAYANA RAO.

Mr. S. NARAYANA RAO.—Sir, I beg to move for leave to introduce a bill for further to amend the Code of Civil Procedure now in force in the Province.

It may have been noticed that the Government of India have recently introduced into His Excellency the Viceroy's Legislative Council a bill to amend the Civil Procedure Code which recasts the whole Code into a new form altogether, by separating the principles that should guide the Courts from Rules which regulate the minor details of practice. Simplicity and elasticity are claimed for the bill without the introduction of any substantial or radical changes in the existing law. If this bill were to become law, and experience justifies the expectations raised, we may find it advantageous to introduce the same or to model ours after it. This may take a long time, but the amendments covered by the present bill cannot be made to wait indefinitely.

The present bill is a very small measure containing five simple clauses.

The first and second of these clauses refer to Section 310A of the Civil Procedure Code which provides for the cancellation of the sale of a judgment-debtor's immovable property on certain conditions. The first clause in the proposed bill refers to clause (*b*) (ii) of sub-section (1) of Section 310A. This clause, as it now stands, directs the judgment-debtor to deposit in Court an amount equal to the purchase money for payment to the decree-holder, even though such amount exceeds the amount due to the decree-holder. The proposed amendment removes this hardship without introducing any innovation.

The second clause deals with a formal or verbal defect in the language of the said Section 310A, Civil Procedure Code. It will be noticed from the wording of the section as it now stands that it contains no operative clause, and it is proposed to supply the defect by adding a clause to the effect that when the judgment-debtor makes the deposit of purchase money etc., as laid down in the preceding clause, the Court shall set aside the sale.

The fifth clause declares that an order passed under the above-named section is appealable.

The third and fourth clauses are somewhat important. They are intended to remove the congestion of work in the Chief Court by raising the minimum value of suits, in which the second appeals may lie. The second appeals in petty cases are said to have blocked the progress of litigation. To remedy this, it is necessary to alter Sections 584 and 586. Hence the motion for leave to introduce this bill.

MR. KANTHARAJ URS seconded the motion.

MR. M. C. RANGIENGAR.—I beg to submit that the bill for introducing which the leave of the Council is asked consists of two distinct clauses, one, a very desirable amendment of Section 310A, Civil Procedure Code, and the other, in my humble opinion, not a desirable amendment, *i.e.*, of Sections 584 and 586. The right of appeal is in every subject an inherent and a natural right; and before such a right is curtailed to any appreciable extent, a very strong case should be made out. The mere fact that the Chief Court finds itself unable to cope with the appeals before it is no ground to curtail the right.

[*Mr. M. C. Rangiengar; Mr. B. Nagappa; Mr. C. Sreenivasiengar; President; Mr. A. Rangaswami Iyengar.*]

In 1884, when the Code of Civil Procedure was introduced, a special departure was made from the British Code, by providing for the right of second appeal in cases in which the findings of the two lower Courts differed. When there are concurrent findings on facts by two Courts, there is no second appeal. This is because two judges have applied their minds to the case and come to the same conclusion. But when two lower Courts differed in their decisions as regards questions of fact, the Government of Mysore rightly considered that it was right and proper that the case should go before the highest tribunal constituted by Government, for meting out justice to parties. Section 584 was so worded, therefore, as to give the people of Mysore the right of second appeal to the Chief Court when two lower Courts differed in their findings. Now this is sought to be interfered with to some extent. And further, by the amendment of Section 586, the right of second appeal is extinguished in all cases of a small cause nature, under Rs. 500. I submit that as private property in Mysore goes, Rs. 500 represents to a large majority of His Highness' subjects, a large fortune. I submit that these two distinct matters have been clubbed together, a very desirable amendment of Section 310A coming in, what I may be permitted to call bad company with the amendments of Sections 584 and 586, and I submit that a rule may be given as to whether we are to vote on the motion as it stands or whether it could be split so that one may vote for the first part only.

MR. B. NAGAPPA.—I fully concur with my learned friend. In Mysore, valuation of property for purposes of Court-fee depends on assessment and is much less than the market value of land. Almost all cases that arise here relate to land. It being an agricultural country, and the people being poor, the valuation in most cases falls under Rs. 500. It is the experience of one and all, both judicial officers and members of the bar, that we invariably succeed in second appeals, and the decree of the Appellate Court is reversed. The only ground given by the mover for this amendment is that there is heavy work in the Chief Court. I hardly think this is a good ground for the proposed amendment. The circumstances under which second appeal was allowed were considered when Section 584 was inserted, and I submit that no strong case has been made out by the mover to depart from the wise principle laid down in that section. I submit that leave should not be granted to introduce such a measure as is contemplated in the second part of the bill. I propose that the bill may be split into two. I fully concur that the first part is desirable.

PRESIDENT.—This is only a motion for leave to introduce the bill. I do not think that at this stage we need discuss questions of principle involved in the measure. When the bill is read in Council before it is referred to a Select Committee, if necessary, the members may urge their opinions, as regards the principles of the bill and if the Council thinks that any deletion is necessary, it is open to it to approve of only of a part of the bill. So far as the present motion is concerned, I do not think that we need go into the principles of the bill now.

MR. C. SREENIVASIENGAR.—This is only a formality. All that is asked for is leave to introduce the bill. The bill will be introduced and read later on.

MR. M. C. RANGIENGAR.—I accept the ruling of the President.

The motion for leave to introduce the bill was then put to the Council and carried.

The bill to amend the Stamp Regulation, II of 1900.

PRESIDENT.—The next subject is the introduction and reading of the Bill to amend the Stamp Regulation, II of 1900. Mover, RAJAKARYA PRAVINA MR. A. RANGASWAMI IYENGAR.

MR. A. RANGASWAMI IYENGAR.—Sir, under Rule 33 of the rules for the conduct of business, I beg to move that the bill to amend the Stamp Regulation, II of 1900, be read in Council. At the meeting of the Council on the 20th August last, I had the honor of applying for permission to introduce this bill and briefly explained the alterations which are proposed to be made in the Stamp Regulation, II of 1900, by the present bill. That application having been granted, the bill and the statement

[*Mr. A. Rangaswami Iyengar; Mr. M. C. Rangiengar.*]

of objects and reasons explaining in detail its provisions have been published both in English and Kanarese in the Government Gazette of 26th September and 14th November 1907, respectively, and copies thereof have been supplied to the members of the Council.

Only one proposal has been received from Dr. W. F. Smeeth about the stamp duty leviable on mining leases and prospecting licenses and about the definition of the term 'lease.' Dr. Smeeth, while agreeing with me that under the first proviso to Section 26 of the Stamp Regulation, the assumed valuation of Rs. 20,000 where the value of the share or royalty is indeterminate is unsuitable, thinks that neither the Deputy Commissioner nor any one else would ever be in a position to estimate the amount of royalty payable and, therefore, suggests that the question of royalty be left out of consideration altogether in computing the stamp duty payable for the lease and that stamp duty be fixed only on the rent payable for the lease which in ordinary cases would be at the rate of Re. 1 per acre. He further points out that under ordinary circumstances the person who obtains the lease does not proceed to work the property himself and get as far as paying any royalty, and that, if the property is found valuable, it is invariably assigned to a company for a consideration, when the proper stamp duty will be recovered on the assignment.

It does not, however, appear to me quite sound in principle to omit 'royalty' altogether as an item of consideration for the lease. Nor can it be assumed that lessees ordinarily never get as far as paying any royalty or that the property when found valuable will invariably be assigned to a company for a consideration. The proviso in question which was added to the Indian Stamp Act, II of 1899, was a relaxation of the provisions of the then existing law. A further concession having been considered desirable in the case of ordinary mines which may not be very profitable, it was further relaxed by Act XV of 1904, and the District Collectors were empowered to fix the royalty in each case. A similar provision is now proposed to be made in our Stamp Regulation. This point may, however, be discussed in Council. I would suggest that, if necessary, provision may be made for the Government to frame rules for the guidance of Deputy Commissioners for estimating the royalty or that Government may once for all fix the minimum amount of royalty for the purpose of stamp duty.

The second suggestion of Dr. Smeeth is that prospecting licenses should also be stamped according to the amount of annual rent charged therefor. It would be inexpedient to treat these as leases, nor are they instruments requiring stamp duty, being issued by Government.

As regards the definition of 'lease,' under clause 16 of Section 2 of the Regulation, "lease" is defined to mean "a lease of immovable property and includes also a patta, a kabuliat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property, etc." Dr. Smeeth thinks that this definition does not include 'royalty' as royalty is payable only for minerals which are *removed* by the lessee and cannot be considered as rent for *immovable* property. But as the definition* of immovable property includes benefits arising out of land, the present definition of lease is sufficiently comprehensive and royalty payable on minerals may come under the terms "rent for immovable property."

There are, as far as I am aware, no other questions of a controversial nature involved in the bill and only amendments which are incorporated in the latest Indian Act have been embodied in it. There is, therefore, no necessity for referring the bill to a Select Committee, and I would move that it be read in Council and taken into consideration at the next Council Meeting.

MR. M. C. RANGIENGAR.—I beg to second it. In doing so, I beg for a little information from Mr. Rangaswami Iyengar. It is proposed that in the definition of "settlement" in clause 24, the following words shall be added, namely, "and where any such disposition has not been made in writing, any instrument recording,

Vide Section 3 (25) of the General Clauses Act, X of 1897.

[*President; Mr. B. Nagappa; Mr. T. Ananda Rao; Mr. M. C. Rangiengar; Mr. C. Sreenivasiengar; Mr. Ananda Rao; Mr. M. Kantharaj Urs.*]

whether by way of declaration of trust or otherwise the terms of any such disposition." It includes a private letter written by an individual in which a statement is made that there had been a settlement before. "Recording" is rather a spacious word. That is the only point to which I would like to draw the attention of the Council with the object that it may be cleared at the next meeting.

PRESIDENT.—It may be noted for the information of the Council.

MR. B. NAGAPPA.—This may be taken for consideration at the next meeting. The proposal of Dr. Smeeth seems to me to be a very important and proper one. We may consider it at the next reading of the bill as we are not going to have a Select Committee.

The motion was put to the Council and carried and the bill was introduced and read.

The bill to amend the Court Fees Regulation.

PRESIDENT.—The fourth subject for consideration to-day is the motion that the bill to amend the Court Fees Regulation and the Report of the Select Committee thereon be taken into consideration. Mover, MR. T. ANANDA RAO.

MR. T. ANANDA RAO.—Under Rule 46 of the rules relating to the conduct of business at this Council, I beg to formally present the report of the Select Committee appointed to consider the Court Fees Regulation amendment bill and to move that the report and the bill as amended by them be taken into consideration at this meeting.

MR. M. C. RANGIENGAR.—I beg to second the motion.

THE PRESIDENT then read the bill as amended by the Select Committee and took the sense of the meeting, and it was agreed that it may be passed at the next meeting.

MR. C. SREENIVASIEGAR.—The formality about the consideration of the bill at a subsequent meeting may be dispensed with in this case.

The members having agreed, the President said that opinion being unanimous, the bill may be taken as passed.

The Village Offices Bill.

PRESIDENT.—The fifth subject is the motion that the Village Offices Bill, as amended by the Select Committee and their report, be taken into consideration. Mover, MR. T. ANANDA RAO.

MR. T. ANANDA RAO.—Under Rule 46 of the rules relating to the conduct of buisness of this Council, and in slight modification of the notice of motion which stands in my name in the agenda paper, I beg leave formally to present to the Council the report of the Select Committee constituted to consider the bill relating to Village Offices in Mysore, and to propose that the Select Committee's report and the bill as amended by them be taken into consideration at a subsequent meeting of the Council. The notice of the amendments on the agenda paper has been somewhat short and there are some points in the Select Committee's report which require examination.

MR. M. KANTHARAJ URS seconded it.

This was put to the Council and carried.

The meeting was then dissolved, the next meeting being fixed for the 24th February next.

V. P. MADHAVA RAO,
President.